

Government of the District of Columbia
ZONING COMMISSION



Application No. 13764, of Theodore and James Pedas, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the use provisions (Sub-section 3105.3) and from the prohibition against parking spaces not being accessible at all times directly from streets or alleys (Sub-section 7206.4) to use the subject premises as general offices in an R-5-D District at the premises 1118 - 22nd Street, N. W., (Square 51, Lots 832, 833, 852, 858, 58, 863, 862 and 861).

HEARING DATE: June 9, 1982
DECISION DATE: July 7 and September 1, 1982

FINDINGS OF FACT:

1. The subject site is located on the west side of 22nd Street just north of its intersection with New Hampshire Avenue and L Street. It is known as premises 1118 22nd Street, N. W. The site is in an R-5-D District.
2. The site is rectangular in shape and is developed with a five story building and rear parking lot. The structure is vacant. To the north of the site is a fifteen foot wide public alley. To the rear of the parking lot is a thirty foot wide public alley.
3. North of the site are three and four story row dwellings in the R-5-B District. East of the site across 22nd Street is a three story detached dwelling in the C-2-C District and a commercial parking lot. Southeast of the site is the Savoy apartment house, a ten story structure. South of the site is the Carriage House apartment building of ten stories. West of the site is a parking lot, followed by the LeJardin restaurant in the C-2-C District.
4. The applicant proposes to use the subject premises for general office use. General office uses are first permitted in a C-1 District. The applicant seeks a variance from the use provisions.
5. The applicant also seeks a variance from the access requirements of Sub-section 7206.4 in order to provide parking spaces which are not accessible at all times directly from streets or alleys. If this variance is granted, a total of twenty-nine parking spaces can be provided on the site. All spaces will be nine by nineteen

feet in dimension. Parking of vehicles in such spaces during office business hours of the premises would be by means of attendant parking.

6. A parking plan which does not require a variance from Sub-section 7206.4 was also submitted. Such plan is less preferable to the applicant because it provides parking spaces for only nineteen vehicles. Under such an alternative plan, an aisle of approximately sixteen feet is provided. All spaces in this arrangement are also nine by nineteen feet in dimension.

7. The subject building was constructed in 1955. A Certificate of Occupancy, No. A33369 permitting an "Office Building" was issued on November 8, 1955 to Norair Realty Co., Inc., owner of the property. The zone district at the time of the construction of the building was "First Commercial." The Height District was Sixty Feet and the Area District was "C."

8. Since the date of the issuance of the first certificate of occupancy, certificates have been issued for the following: "Office Building" (B11377, June 23, 1958); "General Offices and classrooms to teach medical techniques" (B11424, June 19, 1958; basement and 1000 feet of second floor); "Offices" (B47223, November 6, 1964); "Office building" (B97849, April 2, 1976); and "Chancery" for the Libyan Arab Republic (B10098; October 28, 1976).

9. The zone district of the subject premises was changed from "First Commercial" to R-5-D in 1958 when the present Zoning Regulations were adopted.

10. The applicant purchased the subject property in 1978. At that time the property was leased to the Libyan Arab Republic for use as a chancery under a ten year lease. Approximately three years of the lease had expired. The U. S. Government, in May of 1981, expelled the Libyan government from the United States and sealed off the subject property. The applicants regained possession of their property in February, 1982.

11. The applicants filed the subject application on March 15, 1982. The applicants' real estate broker witness testified that prior to the repossession of the structure and more intensely in the ninety days preceding the hearing he had been advertising the property for rent. Large "For Lease" signs were installed on the property. There had been direct mailings to the embassies, foreign governments and health maintenance organizations which were considered as prospects for the subject structure, including the major users in the immediate neighborhood such as Group Health Association and George Washington University. The mailing contained a lease package providing the details of the

subject building such as number of stories, lease term, base rent, parking, possession and a building description. Other leasing brokers were contacted. The broker had no prospective occupants. It was his opinion that the size of the property and its limited use would make the building difficult to lease.

12. The applicant's architect and a general contractor testified that the subject structure was suitable only for office use, not residential. The subject building was built in three phases. There are existing masonry walls in certain areas which divide the first phase from the last phase of construction. There is one single elevator to serve the entire building. It is located towards the southern portion of the original construction. The elevator is not centrally located. There is no loading dock that gives direct access to a lobby. There is no lobby but a hall leading to an elevator. There are two front entrances as opposed to one central entrance, one on the south side of the building and one on the north. There are two stairwells with no center corridor connecting the stairwells. The front face of the building is on the lot line. No front balconies could be constructed. The witnesses testified that the structure totally lacks amenities that residential living demands, and that any attempts at conversion to residential living would be exorbitantly expensive and could not command the rents required. The witnesses further testified that the size of the building was too large for uses such as rooming houses, boarding houses and museums, all permitted uses in an R-5-D District. The gross area is approximately 30,784 square feet above grade and 6,157 square feet below grade. The total leasable area is 30,763 square feet.

13. The Office of Planning and Development submitted two reports on this application. In its first report of June 4, 1982, the OPD recommended that the application be denied. It reported that the Office of Planning and Development was of the opinion that the applicant had not shown that due to a unique situation or condition of this property, including the improvements built prior to 1958, it cannot be used for a permitted use as zoned. This finding would be the basis for claiming an undue hardship. The OPD did not believe that five months of unsuccessful advertising for a tenant or the previous use of the premises by commercial office uses are adequate justification for a use variance without other substantiating information, including existing floor plans and architectural study which would find the building unusable for any viable R-5-D use. The OPD recognized the office use history of the building and the limited range of R-5-D uses which could fully occupy a building of this size. However, the test for a use variance is stringent and OPD did not believe the applicant had fully

documented the inability of the premises to be used for a permitted use.

14. In a supplemental report dated June 16, 1982, which the Board had requested after the OPD had listened to the testimony of the applicants' witnesses and had an opportunity to study the floor plans, the Office of Planning and Development reported that it had reviewed the applicant's plans and architectural analysis which was presented to the Board at its June 9, 1982, public hearing. It was then the opinion of OPD that the existence of the subject building which was built prior to the adoption of the 1958 Zoning Regulations, under commercial zoning category, creates an undue hardship on the owner using this lot in conformance with the R-5-D use provisions. The OPD found the various constraints imposed by building peculiarities to be persuasive. Specifically, the building's peculiar size and design, i.e., location of stair and elevator cores, fenestration and interior bearing wall locations, substantially limit the practicality and feasibility of this building's occupancy by the limited range of R-5-D uses. Although physical alteration of the building or its demolition could be done to facilitate a permitted R-5-D use, these alternatives would be done at exceptionally high expense, viewed by OPD as unreasonable.

15. As to the variance from the prohibition against parking spaces not being accessible at all times directly from streets or alleys, the OPD recommended that, if it is the decision of the Board to approve this application, this variance request be approved with the condition that a parking attendant be on duty during the building's hours of operation. This stacked parking arrangement will accommodate more automobiles than conventional accessible spaces, and as the future general office tenant and operational traffic characteristics are not known at this time, the stacked arrangement would decrease the possibility of objectionable impacts due to inadequate on-site parking.

16. The Board finds that the second OPD report constitutes the final position of OPD. The Board finds that the property has not been marketed for a sufficient period of time so as to prove that its use for permitted R-5-D purposes is not possible. The Board therefore does not concur in the OPD recommendation.

17. Advisory Neighborhood Commission 2A, by resolution dated June 1, 1982, voted not to oppose the application under certain conditions. The ANC noted that the building was originally constructed as an office building, that a general office use is less intense than a chancery use and the structure has a grandfathered non-conforming use of a chancery. The ANC reported that the governing Board of the only adjoining residential use, the Carriage House

Condominium, has expressed its preference that the underlying residential zoning remain and that it be specifically recognized that, if and when the present office building is redeveloped, any new development should be residential. The ANC expressed its strong commitment to residential use and existing potential for housing. The ANC further reported that the owner of the subject property is willing to agree in writing that the requested variance for general office use shall be deemed to have no precedential value, that the underlying residential zoning shall remain in effect and all existing controls in the Zoning Regulations on non-conforming uses shall govern this building and use and that, for any new development, the granting of the use variance requested shall have no force. The ANC requested that the Board incorporate its resolution and the cited letter from the owners of the subject property by reference within its Order.

18. The Board is required by statute to give great weight to the issues and concerns of the ANC when the recommendation is reduced to writing. As to the commitment to residential use, the Board notes that the subject building has never been used for residential purposes. Any action taken by the Board cannot change the R-5-D zoning of the property. Any future development of the site would have to conform to the requirements of the Regulations then in effect, unless relief was sought from the Board. As to the case serving as a precedent, the Board has consistently stated that each application must be decided on its own merits on the basis of the facts presented. The Board will not incorporate the ANC's resolution in its decision, as the decision is to deny the application.

19. There was no opposition to the application at the public hearing.

20. The Board denied the application at the public meeting of June 7, 1982.

21. The applicant, by Motion filed August 24, 1982, a date prior to the issuance of this Order by the Board, requested a further hearing on the designated issue of whether the applicant is able to make a reasonable use of the property for a permitted use under the existing R-5-D zoning. The reasons for the Motion were as follows:

- a. Subsequent to the dates of both the public hearing and the public meeting at which the Board's decision was made, the applicant has continued to aggressively and exhaustively market the subject property for chancery, clinic, university and all other uses permitted in the R-5-D zone district. In particular, the applicant has specifically contacted and offered the building to the

Government of Korea, Group Health Association (G.H.A.), Government of Iraq, George Washington University, Government of Algeria, and George Washington University's Group Health Plan. All of the above potential tenants have informed the applicant that they are not interested in leasing the subject property. In addition, the applicant through its leasing agent, has again notified other commercial brokers in writing that the property is available for lease.

- b. Also subsequent to the dates of the public hearing and the public meeting above, the applicant has offered to sell, as well as to lease, the subject property. In particular, the applicant has offered to sell the building to users which it believes may be interested in such a purchase, specifically including the Government of Korea. The applicant further intends to immediately place a "For Sale" sign on the property and to otherwise market the property for sale or lease.
- c. In spite of the above efforts, the applicant has been unable to locate any prospective tenants, whether permitted by right, by special exception or by variance, who are interested in leasing the subject premises. The applicant, therefore, is unable to present to the Board a specific, prospective tenant.
- d. The subject building has been vacant since May 13, 1981, a period of approximately fifteen months.
- e. The applicant has suffered a loss of approximately \$215,000 on this building solely as a result of U.S. Government action to expel all Libyan diplomatic personnel from the United States. The applicant continues to suffer a loss of approximately \$18,000 for every month the building sits vacant.
- f. As stated by the D.C. Court of Appeals in the Clerics of St. Viator case, "(t)he purpose of a variance provision is to prevent a zoning statute from operating to deprive a property owner of all beneficial use of his property. A statute which so operated would be unconstitutionally confiscatory." Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment, 320 A.2d 291, 294 (1974).

22. The Board at its public meeting of September 1, 1982, denied the Motion for Further Hearing. The Board found that the grounds for the Motion presented no new

issues and no substantial new evidence that was not already before the Board at the public hearing to which due consideration was given by the Board in its deliberations.

23. The applicant has the burden of proving its case. The Board finds that the applicant has not met the burden of proof to sustain, in the first instance, a use variance. The Board is aware of the history of the subject building. The Board is not persuaded that the applicant has done all it can to find a use for the site that will satisfy the requirements of the R-5-D District whether it be a matter-of-right use or by way of a special exception.

24. The Board finds that the proposed general office use is too broad and indiscriminating. The applicant has no specific tenant in mind. There is accordingly no knowledge of what impact an unknown tenant might have on the subject residential neighborhood in terms of number of employees, hours of operation and traffic.

25. In addition to a hardship inherent in the property itself to support a use variance, the applicant must satisfy Paragraph 8207.11 of the Zoning Regulations which states that the relief requested may be granted if this results in no substantial detriment to the public good and the relief will not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Board finds that the applicant has submitted insufficient persuasive evidence to meet the standards of Paragraph 8207.11.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicants are seeking two variances. The general office use requires a use variance. The parking space relief is an area variance. To support the use variance, the applicants must present substantial evidence of a hardship that is inherent in the property so that the property cannot be used for a purpose for which it is zoned. The Board, for reasons enumerated in the Findings of Fact, concludes that the applicants have not met the burden of proof.

The Board notes that, even though the property was built for general office use, and has a long history of office use, the last recorded Certificate of Occupancy was for a conforming R-5-D use. Even though the applicants asserted that R-5-D uses could not be found to occupy the building, the Board is not convinced by the evidence and testimony before it that the applicants have exhausted all reasonable efforts to put the building to a use permitted either as a matter-of-right or as a special exception. This point is the critical question, and is dispositive of the

application. The Board further notes that the applicants presented no potential tenant for the property. The Board is thus unable to conclude that the future use of this property for offices by an unknown occupant would not adversely affect the neighborhood.

As to the variance from the parking access requirements, the Board concludes that there is no practical difficulty. As set forth in Finding No. 6, the applicants can provide a parking layout that conforms to the Regulations in all respect. That that layout is less desirable to the applicants than their favored layout is not a proper basis for a variance.

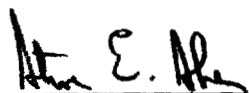
The Board concludes that it has given "great weight" to the issues and concerns of the ANC. For the reasons cited, it is ORDERED that the application is DENIED.

VOTE: On the application: 4-0 (William F. McIntosh, Lindsley Williams, Connie Fortune and Charles R. Norris to DENY; Douglas J. Patton not voting, not having heard the case).

VOTE: On the Motion for Further Hearing 3-2 (Connie Fortune and Charles R. Norris to DENY; Douglas J. Patton to deny by proxy; Lindsley Williams opposed; William F. McIntosh opposed by proxy).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

DEC 17 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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